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**IN THE
COURT OF APPEALS OF INDIANA**

BRIAN BLAKE,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 53A01-0607-CR-285
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable Douglas R. Bridges, Judge
Cause No. 53C05-0104-CF-298 & 53C05-0007-CF-422

April 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Brian Blake appeals the trial court's partial denial of his motion to correct erroneous sentence. Blake raises two issues, which we restate as:

- I. Whether the trial court erred by denying Blake good time credit; and
- II. Whether the trial court erred by denying Blake credit for time served at the Beacon House and good time credit.

We affirm.

The relevant facts follow. On October 11, 2001, Blake pleaded guilty to two counts of theft as class D felonies in Cause No. 53C05-0007-CF-422 ("CF-422") and one count of residential entry and being an habitual offender in Cause No. 53C05-0104-CF-298 ("CF-298"). The plea agreement provided that Blake would receive a sentence of ten years imprisonment with four to six years suspended and that some portion of the executed sentence could be served in treatment as directed by the trial court in its discretion. The plea agreement also stated that Blake had "323 (real) days executed as of 10/11/01." Appellant's Appendix at 21.

On November 26, 2001, the trial court sentenced Blake in CF-298 to three years imprisonment enhanced by four years for his status as an habitual offender with two years suspended to probation. The trial court sentenced Blake in CF-422 to three years suspended to probation and ordered that the sentence be served consecutive to the sentence in CF-298. The trial court gave Blake "credit for 223 days spent pending disposition and good time credit." Id. at 5.

On May 13, 2002, the trial court granted a modification of placement and transferred Blake's "stint of incarceration" from the Indiana Department of Correction to

the Beacon House. Id. On September 20, 2002, the probation department filed a petition to revoke Blake's suspended sentence, and Blake admitted the allegations in the petition. On October 27, 2003, the trial court revoked Blake's suspended sentence in CF-298 and found that Blake had "1011 1/2 real days to serve in this cause." Id. at 8. In CF-422, the trial court revoked Blake's suspended sentence, applied good time credit, and found that Blake had "served all time in this cause." Id. at 19.

On June 22, 2005, the trial court sua sponte issued a corrected abstract of judgment in CF-298 and found that the previous imposition of 1011 1/2 days was incorrect. The trial court found that the correct sentence was 2023 days. On October 21, 2005, the trial court informed Blake that "no credit is or will be given for [Blake's] time at the Beacon House. It was NOT a successful placement." Id. at 9.

On March 17, 2006, Blake filed a motion to correct erroneous sentence with respect to CF-298. Blake argued that he should have received 323 days of credit for time served in the original sentence rather than the 223 days of credit for time served ordered by the trial court. Additionally, Blake argued that the trial court failed in its sua sponte order of June 22, 2005, to give him credit for 140 days of time served at Beacon House. On May 19, 2006, the trial court issued an order clarifying Blake's credit time. The order provided:

The court having reviewed Defendant's Motion to Correct Erroneous Sentence filed on March 17, 2006, and having further reviewed the record of proceedings, finds the Motion should be and hereby is GRANTED, and finds that the court erroneously credited Defendant with 223 days when the correct credit is 323 days. The Sentencing Order issued herein shall be corrected accordingly. The court does not give class I credit

for Defendant's stay at Beacon House because defendant was not successful in that placement. Defendant is therefore not entitled to that credit.

The Court THEREFORE ORDERS the Department of Corrections to amend its calculation of credit time to reflect 100 additional days credit, without class I credit, under whatever sentence defendant is currently serving.

Id. at 54.

We review a trial court's decision on a motion to correct erroneous sentence "only for abuse of discretion." Mitchell v. State, 726 N.E.2d 1228, 1243 (Ind. 2000), reh'g denied, overruled on other grounds by Robinson v. State, 805 N.E.2d 783, 787 (Ind. 2004). An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it. Myers v. State, 718 N.E.2d 783, 789 (Ind. Ct. App. 1999).

Ind. Code § 35-38-1-15, which governs a motion to correct erroneous sentence, provides:

If the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice is given to the convicted person. The convicted person and his counsel must be present when the corrected sentence is ordered. A motion to correct sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.

In Robinson, the Indiana Supreme Court addressed the difference between a motion to correct erroneous sentence and a petition for post-conviction relief and held that "a motion to correct sentence is available only to correct sentencing errors clear from the face of the judgment." Robinson, 805 N.E.2d at 794.

When claims of sentencing errors require consideration of matters outside the face of the sentencing judgment, they are best addressed promptly on direct appeal and thereafter via post-conviction relief proceedings where applicable. Use of the statutory motion to correct sentence should thus be narrowly confined to claims apparent from the face of the sentencing judgment, and the “facially erroneous” prerequisite should henceforth be strictly applied We therefore hold that a motion to correct sentence may only be used to correct sentencing errors that are clear from the face of the judgment imposing the sentence in light of the statutory authority. Claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct sentence.

Id. at 787. Thus, a motion to correct sentence can be used to correct errors such as “illegal sentences in violation of express statutory authority or an erroneous interpretation of a penalty provision of a statute,” but will not be available for claims raising “constitutional issues or issues concerning how the trial court weighed factors in imposing sentence.” Id. at 786.

In addition to limiting a motion to correct sentence to errors apparent on the face of the judgment, Indiana case law has long emphasized that “the preferred procedure is by way of a petition for post-conviction relief.” This emphasis that post-conviction proceedings are “preferred” for raising sentencing error should not be understood to imply that the statutory motion to correct sentence is nevertheless permissible to raise claims that are not facially evident on the judgment. It is not. This Court “tries to encourage conservation of judicial time and energy while at the same time affording speedy and efficient justice to those convicted of a crime.” As to sentencing claims not facially apparent, the motion to correct sentence is an improper remedy. Such claims may be raised only on direct appeal and, where appropriate, by post-conviction proceedings.

Id. at 787 (footnote and internal citations omitted).

I.

The first issue is whether the trial court erred by denying Blake good time credit. Blake argues that the trial court should have granted him class I good time credit on the 100 days of pre-trial detention. The plea agreement provided that Blake had “323 (real) days executed as of 10/11/01.” Appellant’s Appendix at 21. However, in the initial sentencing order, the trial court granted Blake “credit for 223 days spent pending disposition and good time credit.” Id. at 5. Recognizing the error, the trial court granted Blake an additional 100 days of credit for time served in pretrial detention but denied Blake any additional good time credit. It is unclear why the trial court would have initially granted good time credit but, years later, denied additional good time credit when it corrected the error in the number of days served. However, resolution of this issue necessarily requires consideration of factors outside of the face of the judgments. As noted above, a motion to correct erroneous sentence is “available only to correct sentencing errors clear from the face of the judgment.” Robinson, 805 N.E.2d at 794. This argument is not properly presented by way of a motion to correct erroneous sentence. As a result, we cannot say that the trial court abused its discretion by denying Blake’s motion to correct erroneous sentence on this issue. See, e.g., Jackson v. State, 806 N.E.2d 773, 774 (Ind. 2004) (holding that the trial court properly denied the defendant’s motion to correct erroneous sentence because a motion to correct sentence is available only to correct sentencing errors clear from the face of the judgment and is not available to challenge entries or omissions in an abstract of judgment).

II.

The next issue is whether the trial court erred by denying Blake credit for time served at the Beacon House and good time credit. Blake argues that he is entitled to credit for 140 days of time spent at the Beacon House and also good time credit for the same time period. We express no opinion as to the merits of Blake’s claim because the claim is not properly resolved through a motion to correct erroneous sentence.¹ As noted above, a motion to correct erroneous sentence is “available only to correct sentencing errors clear from the face of the judgment.” Robinson, 805 N.E.2d at 794. Whether Blake was denied credit for his time spent at the Beacon House and was entitled to Class I credit is not clear from the face of the judgments, and, thus, this issue was not properly brought by way of a motion to correct erroneous sentence. Consequently, the trial court

¹ The State points out that Ind. Code § 35-38-2.6-6 provides:

- (a) As used in this subsection, “home” means the actual living area of the temporary or permanent residence of a person. The term does not include a:
 - (1) hospital;
 - (2) health care facility;
 - (3) hospice;
 - (4) group home;
 - (5) maternity home;
 - (6) residential treatment facility;
 - (7) boarding house; or
 - (8) public correctional facility.

A person who is placed in a community corrections program under this chapter is entitled to earn credit time under IC 35-50-6 unless the person is placed in the person’s home.
- (b) A person who is placed in a community corrections program under this chapter may be deprived of earned credit time as provided under rules adopted by the department of correction under IC 4-22-2.

did not abuse its discretion by denying Blake's motion to correct erroneous sentence on this issue. See, e.g., Jackson, 806 N.E.2d at 774 (holding that the trial court properly denied the defendant's motion to correct erroneous sentence because a motion to correct sentence is available only to correct sentencing errors clear from the face of the judgment and is not available to challenge entries or omissions in an abstract of judgment).

For the foregoing reasons, we affirm the trial court's partial denial of Blake's motion to correct erroneous sentence without prejudice to his right to seek post conviction relief.

Affirmed.

SULLIVAN, J. and CRONE, J. concur

See also Purcell v. State, 721 N.E.2d 220, 223 (Ind. 1999) (holding that an offender placed on home detention pursuant to a community corrections placement was entitled to earn credit for time served), reh'g denied.